IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re application of: Martin BAKER et al. Group Art Unit: 1725

Serial No.: 10/789,854 Examiner: M. Aboagye

Filed: February 26, 2004

For: HAND HELD POWDER-FED LASER FUSION WELDING TORCH

Attorney Docket No.: H0002114D2

Customer No.: 000128

REPLY BRIEF PURSUANT TO 37 C.F.R. § 41.41

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This is a Reply Brief pursuant to 37 C.F.R. § 41.41 in response to an Examiner's Answer mailed November 30, 2007. Each of the topics in the Examiner's Answer for which a response is supplied herein are indicated using appropriate subheadings on the following pages. This Reply Brief does not include any new or non-admitted amendments, or any new or non-admitted affidavit or other evidence. As such, Appellant submits it is in full compliance with 37 C.F.R. § 41.41(a).

I. THE EXAMINER'S RESPONSE TO APPELLANTS' ARGUMENTS IS UNTENABLE, BOTH LEGALLY AND TECHNICALLY

In the Examiner's Answer, the Examiner agrees that Krause et al. does not explicitly disclose that the laser beam focal point and the filler material focal point are independently adjustable. Examiner's Answer at 5. To try and get around this admitted lack of teaching, the Examiner alleges that Krause et al., at col. 2, ll. 39-42, teaches that the powder guide cap is "separate or independent of the laser guide part," and that Krause et al., at col. 4, ll. 15-20, further teaches "the clearance for introducing and distributing the stream of powder through the powder guide duct (6) is limited by the contour of tan inert gas guide cap (8, column 4, lines 15-20) which threadedly couples with the powder guide cap 4." Id. at 6. The Examiner then erroneously posits that this suggests independent control for the laser stream and filler material.

The Examiner seems to be suggesting that because the powder guide cap (4) and the inert gas guide cap (8) are each disposed on the nozzle with threads, this somehow teaches that the laser beam focal point and the filler material focal point are independently adjustable. This is, of course, an easy leap to make when Appellants' own disclosure is consulted. However, if one reads Krause et al., while honestly and objectively placing themselves in the position of the ordinarily skilled artisan at the time of the instant invention, there is no way that one could understand this reference to suggest independent adjustability of the laser beam focal point and the filler material focal point. Indeed, as was pointed out in the Appeal Brief, Krause et al. explicitly teaches, at col. 4, ll. 21-24, "a positive and non-positive connection between both caps 4, 8 with the tight enclosure of the powder guide ducts 6 right to their outlet apertures 7 is achieved with the tightening of a coupling ring 15 by means of thread 16 on its stepped shoulder." Thus, what Krause et al. teaches is that the caps 4, 8 are fixedly tightened prior to use, and are not adjustable.

From the above, Appellants' submit that the Examiner is relying solely on hindsight reasoning, which has been cautioned against even in the Supreme Court's most recent pronouncements on the law of obviousness. See KSR International Co. v. Teleflex Inc., 550 U.S. ___, 127 S. Ct. 1727, 1739 (2007) ("[a] factfinder should be aware, of course, of the distortion caused by hindsight bias and must be cautious of arguments reliant upon ex post reasoning."). Moreover, the Examiner's reasoning and assertions fly directly in the face of what is technically disclosed.

II. CONCLUSION

In view of the foregoing, Appellant once again submits that the final rejection of the claims is improper and should not be sustained.

Respectfully submitted,

Dated January 28, 2008

/PAUL D. AMROZOWICZ, REG. NO. 45264/